

HOUSE BILL No. 4067

January 13, 2011, Introduced by Reps. Lori, MacMaster and O'Brien and referred to the Committee on Families, Children, and Seniors.

A bill to amend 1956 PA 205, entitled
"The paternity act,"
by amending sections 1, 4, and 6 (MCL 722.711, 722.714, and
722.716), sections 1 and 6 as amended by 2000 PA 31 and section 4
as amended by 1998 PA 113.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. As used in this act:

2 (A) "CHILD" MEANS A CHILD BORN OUT OF WEDLOCK.

3 (B) ~~(a)~~ "Child born out of wedlock" means ~~a~~ **ANY OF THE**
4 **FOLLOWING:**

5 (i) A child ~~begetten and~~ born to a woman who was not married
6 from the conception to the date of birth of the child. ~~, or a~~

7 (ii) A child ~~that~~ **WHOM** the court has determined, **BEFORE AN**
8 **ACTION FILED UNDER THIS ACT**, to be a child born or conceived during
9 a marriage but not **TO BE** the issue of that marriage.

~~(b) "Child" means a child born out of wedlock.~~

~~(c) "Mother" means the mother of a child born out of wedlock.~~

(iii) A CHILD WHOM THE COURT DETERMINES, DURING THE PENDENCY OF AN ACTION FILED UNDER THIS ACT, TO BE A CHILD BORN OR CONCEIVED DURING A MARRIAGE BUT NOT TO BE THE ISSUE OF THAT MARRIAGE.

(C) ~~(d)~~—"Court" means the circuit court.

(D) ~~(e)~~—"DNA identification profile" means the results of the DNA identification profiling of genetic testing material.

(E) ~~(f)~~—"DNA identification profiling" means a validated scientific method of analyzing components of deoxyribonucleic acid molecules in a sample of genetic testing material to identify the pattern of the components' chemical structure that is unique to the individual.

~~(g) "State disbursement unit" or "SDU" means the entity established in section 6 of the office of child support act, 1971 PA 174, MCL 400.236.~~

(F) ~~(h)~~—"Genetic testing material" means a sample of an individual's blood, saliva, or tissue collected from the individual that is used for genetic paternity testing conducted under this act.

(G) "MOTHER" MEANS THE MOTHER OF A CHILD BORN OUT OF WEDLOCK.

(H) "STATE DISBURSEMENT UNIT" OR "SDU" MEANS THE ENTITY ESTABLISHED IN SECTION 6 OF THE OFFICE OF CHILD SUPPORT ACT, 1971 PA 174, MCL 400.236.

(i) "Summary report" means a written summary of the DNA identification profile that includes only the following information:

(i) The court case number, if applicable, the laboratory case number or identification number, and the ~~family independence agency~~ **DEPARTMENT OF HUMAN SERVICES** case number.

(ii) The mother's name and race.

(iii) The child's name.

(iv) The alleged father's name and race.

(v) The collection dates and identification numbers of the genetic testing material.

(vi) The cumulative paternity index.

(vii) The probability of paternity.

(viii) The conclusion as to whether the alleged father can or cannot be excluded as the biological father.

(ix) The name, address, and telephone number of the contracting laboratory.

(x) The name of the individual certifying the report.

Sec. 4. (1) An action under this act shall be brought in the circuit court by ~~the~~ **ANY OF THE FOLLOWING:**

(A) THE mother. ~~, the father, a~~

(B) A child who became 18 years of age after August 15, 1984 and before June 2, 1986. ~~, or the family independence agency~~

(C) THE DEPARTMENT OF HUMAN SERVICES as provided in this act.

(D) AN INDIVIDUAL NAMED AS THE CHILD'S FATHER ON A CERTIFICATE OF BIRTH OR THE CHILD'S PRESUMED FATHER.

(E) A PUTATIVE FATHER. HOWEVER, A PUTATIVE FATHER MAY NOT BRING AN ACTION IF THE CHILD IS CONCEIVED AS THE RESULT OF ACTS FOR WHICH THE PUTATIVE FATHER WAS CONVICTED OF CRIMINAL SEXUAL CONDUCT UNDER SECTIONS 520B TO 520E OF THE MICHIGAN PENAL CODE, 1931 PA

1 328, MCL 750.520B TO 750.520E.

2 (2) IF THE MOTHER WAS MARRIED AT ANY TIME FROM THE CONCEPTION
3 TO THE DATE OF BIRTH OF THE CHILD, A PUTATIVE FATHER MAY NOT BRING
4 AN ACTION UNDER THIS ACT UNLESS THE ACTION IS COMMENCED WITHIN 1
5 YEAR AFTER THE BIRTH OF THE CHILD AND 1 OR MORE OF THE FOLLOWING
6 APPLY:

7 (A) THE MOTHER AND THE PUTATIVE FATHER MUTUALLY AND OPENLY
8 ACKNOWLEDGE A BIOLOGICAL RELATIONSHIP BETWEEN THE PUTATIVE FATHER
9 AND THE CHILD BY DOING ALL OF THE FOLLOWING:

10 (i) FILING WITH THE COURT AN AFFIDAVIT STATING THAT THE
11 PUTATIVE FATHER IS THE BIOLOGICAL FATHER OF THE CHILD.

12 (ii) FILING WITH THE COURT THE RESULTS OF BLOOD OR TISSUE
13 TYPING OR DNA IDENTIFICATION PROFILING THAT ESTABLISH THAT THE
14 PROBABILITY OF PATERNITY BY THE PUTATIVE FATHER IS 99% OR HIGHER.

15 (iii) NOTIFYING EACH INDIVIDUAL DESCRIBED IN SUBSECTION (1) (D)
16 THAT THE AFFIDAVIT AND RESULTS HAVE BEEN FILED.

17 (B) ALL OF THE FOLLOWING APPLY:

18 (i) THE MOTHER WAS SEPARATED FROM HER HUSBAND UNDER AN ORDER OR
19 JUDGMENT ENTERED IN AN ACTION FOR SEPARATE MAINTENANCE BROUGHT
20 UNDER SECTION 7 OF 1846 RS 84, MCL 552.7, OR NOT MARRIED AT OR
21 AROUND THE TIME OF CONCEPTION.

22 (ii) THE PUTATIVE FATHER FILES WITH THE COURT AN AFFIDAVIT
23 STATING THAT HE IS THE BIOLOGICAL FATHER OF THE CHILD AND THAT HE
24 CONSENTS TO DNA IDENTIFICATION PROFILING.

25 (iii) THE PUTATIVE FATHER NOTIFIES EACH INDIVIDUAL DESCRIBED IN
26 SUBSECTION (1) (D) THAT HE HAS FILED THE AFFIDAVIT.

27 (C) ALL OF THE FOLLOWING APPLY:

1 (i) THE MOTHER ACKNOWLEDGES IN WRITING A BIOLOGICAL
2 RELATIONSHIP BETWEEN THE PUTATIVE FATHER AND THE CHILD.

3 (ii) THE PUTATIVE FATHER DEMONSTRATES TO THE COURT THAT HE HAS
4 HAD PARENTING TIME WITH THE CHILD BY AGREEMENT WITH THE MOTHER.

5 (iii) THE PUTATIVE FATHER FILES WITH THE COURT AN AFFIDAVIT
6 STATING THAT HE IS THE BIOLOGICAL FATHER OF THE CHILD AND THAT HE
7 CONSENTS TO DNA IDENTIFICATION PROFILING.

8 (iv) THE PUTATIVE FATHER NOTIFIES EACH INDIVIDUAL DESCRIBED IN
9 SUBSECTION (1) (D) THAT HE HAS FILED THE AFFIDAVIT.

10 (3) A JUDGMENT IN AN ACTION UNDER SUBSECTION (2) DOES NOT
11 RELIEVE AN INDIVIDUAL DESCRIBED IN SUBSECTION (1) (D) FROM ANY CHILD
12 SUPPORT OBLIGATION INCURRED BEFORE ENTRY OF THE JUDGMENT.

13 (4) The Michigan court rules for civil actions apply to all
14 proceedings under this act. A complaint shall be filed in the
15 county where the mother or child resides. If both the mother and
16 child reside outside of this state, then the complaint shall be
17 filed in the county where the putative father resides or is found.
18 The fact that the child was conceived or born outside of this state
19 is not a bar to entering a complaint against the putative father.

20 (5) ~~(2)~~—An action to determine paternity shall not be brought
21 under this act if the child's father acknowledges paternity under
22 the acknowledgment of parentage act, 1996 PA 305, MCL 722.1001 TO
23 722.1013, or if the child's paternity is established under the law
24 of another state.

25 (6) ~~(3)~~—~~An~~ EXCEPT AS OTHERWISE PROVIDED IN THIS ACT, AN action
26 under this act may be commenced during the pregnancy of the child's
27 mother or at any time before the child reaches 18 years of age. ~~For~~

~~a child who became 18 years of age after August 15, 1984 and before June 2, 1986, an action under this act may be commenced before January 1, 1995. This subsection applies regardless of whether the cause of action accrued before June 1, 1986 and regardless of whether the cause of action was barred under this subsection before June 1, 1986.~~ A summons issued under this section shall be in the form the court determines and shall be served in the same manner as is provided by court rules for the service of process in civil actions.

(7) ~~(4)~~ If the county ~~family independence agency~~ **OFFICE OF THE DEPARTMENT OF HUMAN SERVICES** of the county in which the mother or alleged father resides first determines that she or he has physical possession of the child and is eligible for public assistance or without means to employ an attorney; if the ~~family independence agency~~ **DEPARTMENT OF HUMAN SERVICES** is the complainant; ~~or~~ **OR** if the mother, alleged father, or child is receiving services under part D of title IV of the social security act, 42 U.S.C. ~~USC~~ **651 to 667-669B**, then the prosecuting attorney or an attorney employed by the county ~~under section 1 of 1941 PA 15, MCL 49.71,~~ shall initiate and conduct proceedings under this act. **THIS SUBSECTION DOES NOT APPLY TO AN ACTION FILED UNDER SUBSECTION (2).** The prosecuting attorney **OR AN ATTORNEY EMPLOYED BY THE COUNTY** shall utilize the child support formula developed under section 19 of the friend of the court act, 1982 PA 294, MCL 552.519, as a guideline in petitioning for child support. A complaint filed under this act shall be verified by oath or affirmation.

(8) ~~(5)~~ The party filing the ~~A~~ complaint **UNDER THIS ACT** shall

1 name the person believed to be the father of the child and state in
2 the complaint the time and place, as near as possible, when and
3 where the mother became pregnant. If the ~~family independence agency~~
4 **DEPARTMENT OF HUMAN SERVICES** is the plaintiff, the required facts
5 shall be stated upon information and belief.

6 (9) ~~(6)~~—Upon the filing of a complaint **UNDER THIS ACT**, the
7 court shall issue a summons against the named defendant. If the
8 defendant does not file and serve a responsive pleading as required
9 by the court rules, the court may enter a default judgment. Neither
10 party is required to testify before entry of a default judgment in
11 a proceeding under this act.

12 (10) ~~(7)~~—If, after service of process, the parties fail to
13 consent to an order naming the man as the child's father as
14 provided in this act within the time permitted for a responsive
15 pleading, ~~then the family independence agency~~ **DEPARTMENT OF HUMAN**
16 **SERVICES** or its designee may file and serve both the mother and the
17 alleged father with a notice requiring that the mother, alleged
18 father, and child appear for genetic paternity testing as provided
19 in section 6.

20 (11) ~~(8)~~—If the mother, alleged father, or child does not
21 appear for genetic paternity testing as provided in subsection ~~(7)~~
22 ~~(10)~~, ~~then the family independence agency~~ **DEPARTMENT OF HUMAN**
23 **SERVICES** or its designee may apply to the court for an order
24 compelling genetic paternity tests as provided in section 6 or may
25 seek other relief as permitted by statute or court rule.

26 (12) ~~(9)~~—It is unnecessary in any proceedings under this act
27 commenced by or against a minor to have a next friend or guardian

1 ad litem appointed for the minor unless required by the circuit
2 judge. A minor may prosecute or defend any proceedings in the same
3 manner and with the same effect as if he or she were of legal age.

4 (13) ~~(10)~~—If a child born out of wedlock is being supported in
5 whole or in part by public assistance, including medical
6 assistance, the ~~family independence agency~~ **DEPARTMENT OF HUMAN**
7 **SERVICES** may file a complaint on behalf of the child in the circuit
8 court in the county in which the child resides. The mother or
9 alleged father of the child shall be made a party plaintiff and
10 notified of the hearing on the complaint by summons. The complaint
11 made by the ~~family independence agency~~ **DEPARTMENT OF HUMAN SERVICES**
12 shall be verified by the director of the ~~family independence agency~~
13 **DEPARTMENT OF HUMAN SERVICES**, or his or her designated
14 representative, or by the director of the county ~~family~~
15 ~~independence agency~~ **OFFICE OF THE DEPARTMENT OF HUMAN SERVICES** of
16 the county in which an action is brought, or the county director's
17 designated representative.

18 (14) ~~(11)~~—1986 PA 107, which added this subsection, does not
19 affect the rights of an indigent defendant in proceedings under
20 this act as established by decisions of the courts of this state
21 before June 1, 1986.

22 (15) ~~(12)~~—If a determination of paternity is made under this
23 act, the court may enter an order of filiation as provided in
24 section 7. Regardless of who commences an action under this act, an
25 order of filiation entered under this act has the same effect, is
26 subject to the same provisions, and is enforced in the same manner
27 as an order of filiation entered on complaint of the mother or

1 father.

2 Sec. 6. (1) In a proceeding under this act before trial, the
3 court, ~~upon~~**ON** application ~~made~~ by or on behalf of either party, or
4 on its own motion, shall order that the mother, child, and alleged
5 father submit to blood or tissue typing determinations, which may
6 include, but are not limited to, determinations of red cell
7 antigens, red cell isoenzymes, human leukocyte antigens, serum
8 proteins, or DNA identification profiling, to determine whether the
9 alleged father is likely to be, or is not, the father of the child.
10 If the court orders a blood or tissue typing or DNA identification
11 profiling to be conducted and a party refuses to submit to the
12 typing or DNA identification profiling, in addition to any other
13 remedies available, the court may do either of the following:

14 (a) Enter a default judgment at the request of the appropriate
15 party.

16 (b) If a trial is held, allow the disclosure of the fact of
17 the refusal unless good cause is shown for not disclosing the fact
18 of refusal.

19 (2) A blood or tissue typing or DNA identification profiling
20 shall be conducted by a person accredited for paternity
21 determinations by a nationally recognized scientific organization,
22 including, but not limited to, the American association of blood
23 banks.

24 (3) The court shall fix the compensation of an expert at a
25 reasonable amount and may direct the compensation to be paid by the
26 county, **IF SECTION 4(7) IS APPLICABLE**, or by any other party to the
27 case, or by both in the proportions and at the times the court

1 prescribes. Before blood or tissue typing or DNA identification
2 profiling is conducted, the court may order a part or all of the
3 compensation paid in advance. If the ~~family independence agency~~
4 **DEPARTMENT OF HUMAN SERVICES** paid for the genetic testing expenses,
5 the court may order repayment by the alleged father if the court
6 declares paternity. **IN AN ACTION FILED UNDER SECTION 4(2), THE**
7 **PUTATIVE FATHER SHALL PAY FOR THE GENETIC TESTING EXPENSES.**
8 Documentation of the genetic testing expenses is admissible as
9 evidence of the amount, which evidence constitutes prima facie
10 evidence of the amount of those expenses without third party
11 foundation testimony.

12 (4) Subject to subsection (5), the result of blood or tissue
13 typing or a DNA identification profile and the summary report shall
14 be served on the mother and alleged father. The summary report
15 shall be filed with the court. Objection to the DNA identification
16 profile or summary report is waived unless made in writing, setting
17 forth the specific basis for the objection, within 14 calendar days
18 after service on the mother and alleged father. The court shall not
19 schedule a trial on the issue of paternity until after the
20 expiration of the 14-day period. If an objection is not filed, the
21 court shall admit in proceedings under this act the result of the
22 blood or tissue typing or the DNA identification profile and the
23 summary report without requiring foundation testimony or other
24 proof of authenticity or accuracy. If an objection is filed within
25 the 14-day period, on the motion of either party, the court shall
26 hold a hearing to determine the admissibility of the DNA
27 identification profile or summary report. The objecting party has

1 the burden of proving by clear and convincing evidence by a
2 qualified person described in subsection (2) that foundation
3 testimony or other proof of authenticity or accuracy is necessary
4 for admission of the DNA identification profile or summary report.

5 (5) If the probability of paternity determined by the
6 qualified person described in subsection (2) conducting the blood
7 or tissue typing or DNA identification profiling is 99% or higher,
8 and the DNA identification profile and summary report are
9 admissible as provided in subsection (4), paternity is presumed. If
10 the results of the analysis of genetic testing material from 2 or
11 more persons indicate a probability of paternity greater than 99%,
12 the contracting laboratory shall conduct additional genetic
13 paternity testing until all but 1 of the putative fathers is
14 eliminated, unless the dispute involves 2 or more putative fathers
15 who have identical DNA.

16 (6) Upon the establishment of the presumption of paternity as
17 provided in subsection (5), either party may move for summary
18 disposition under the court rules. This section does not abrogate
19 the right of either party to child support from the date of birth
20 of the child if applicable under section 7.